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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,947	01/15/2004	Robert Auer	7400-X03-047	6207

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EXAMINER	
PERRIN, JOSEPH L	

ART UNIT	PAPER NUMBER
1746	

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/758,947	AUER ET AL.	
	Examiner	Art Unit	
	Joseph L. Perrin, Ph.D.	1746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-11* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-11* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *15 January 2004* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 15 January 2004 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609 ¶ C(1).

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "mistake-proof flange-mounting" of claim 1 and the "rubbing device" of claim 7 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

3. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application.

Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In claim 1, the "mistake-proof flange-mounting"

lacks enablement because the disclosure does not adequately describe any flange structure associated with a holding device. A flange mounting suggests a structural difference, however the specification appears to describe a type of labeling of the different cartridges. In claim 7, the "rubbing device" is not adequately described to enable the invention. As described, a "rubbing device to rub out the solid" does not have a structural relationship with the claimed holding device, nor is the disclosure enabling for how the rubbing device and holding device are related. It is noted that these limitations are also not described in the drawings.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, the phrase "mistake-proof flange-mounting" renders the claim indefinite. It is unclear what applicant intends. The original disclosure broadly describes such a mounting. However, the original disclosure does not positively recite such structure to define the meets and bound of the patent protection sought. As best understood, such a "mounting" requires separate support for multiple cartridges and the claims will be examined accordingly. However, clarification and correction are still required. In claim 5, the phrase "in accordance with the application" renders the claim indefinite. Applicant has failed to distinctly claim the subject matter which

applicant regards as the invention. In claim 7, it is unclear what is meant by a "rubbing device". How can a cartridge holder have a "rubbing device"? Furthermore, how are such limitations structurally related? As best understood from the original disclosure, the claim is directed to a structure for forcing a solid detergent and the claims will be examined accordingly. However, clarification and correction are still required.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 4-6, 8-11 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,587,807 to Hickman. Hickman discloses a carwash with a holding device 60 configured to hold a plurality 62/64 of different shaped cartridges/containers, connecting means such as various pipes, and means for diluting/dissolving detergent and wax with water (*see* Figure 1 and relative associated text, col. 1, lines 25-54, col. 2, lines 25-72). It is noted that applicant's limitations directed to the different types of detergents usable in the claimed apparatus are considered intended use and given little patentable weight in apparatus claims. MPEP 2115 and caselaw is replete with teachings disclosing that expressions relating an apparatus to contents thereof during an

intended operation are of no significance in determining patentability of the apparatus claim. *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969). Furthermore, "[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims." *In re Young*, 75 F.2d 966, 25 USPQ 69 (CCPA 1935) (as restated in *In re Otto*, 312 F.2d 937, 136 USPQ 458, 459 (CCPA 1963)). Moreover, it is noted that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In the instant case, the apparatus of Hickman is capable of comprising a solid additive either alone or in combination with a liquid additive. Accordingly, the structural apparatus of Hickman reads on applicant's claimed invention. Applicant is further put on notice that the prior art is replete with teachings of using solid and liquid detergents, either in concentrate form or in diluted form.

10. Claims 1, 4-6, & 8-11 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,033,489 to Ferre *et al.* (hereinafter "Ferre"). Ferre discloses a carwash installation as claimed by applicant including a mistake-proof mounting (*see* Figure 20 and relative associated text including cartridges 982/984 on shelf 962 connected to separate pumps 986/990). See above regarding intended use claims including different detergents usable in the apparatus.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

14. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hickman or Ferre in view of U.S. Patent No. 2002/0074367 to Kawakita. Recitation of Hickman and Ferre are repeated here from above. Hickman and Ferre do not disclose using snap closures to secure detergent cartridges/containers to a holding means. Kawakita teaches that it is known to use snap closures for chemical additive containers such as soap dispensers and automobile chemical dispensers for "spill safety" and "convenience" (*see* paragraphs [0003], [0004], & [0239]). Therefore, the position is taken that a person of ordinary skill in the art at the time the invention was made would have been motivated to modify the apparatus of Hickman with snap closures disclosed by Kawakita in order to provide improved spill safety and convenience in dispensing chemical additives.

15. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hickman or Ferre in view of U.S. Patent No. 5,746,353 to Cheok *et al.* (hereinafter "Cheok"). Recitation of Hickman and Ferre are repeated here from above. Hickman and Ferre do not disclose using a detergent cartridge with multiple containers. Cheok teaches that it is advantageous to supply a single portable container with multiple containers for storing and dispensing multiple different types of detergent such as a solid and a liquid (*see* Figures 1-2 and relative associated text, col. 2, lines 1-14). Therefore, the position is taken that a person of ordinary skill in the art at the time the invention was made would have been motivated to modify the apparatus of Hickman or Ferre with the container having multiple sub-containers for the purpose of supplying a plurality of

additives to a detergent dispensing system. Moreover, it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. St. Regis Paper Co. v. Bemis Co., 193 USPQ 8.

16. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hickman or Ferre in view of U.S. Patent No. 4,989,761 to Ikeda. Recitation of Hickman and Ferre are repeated here from above. Hickman and Ferre do not disclose using a rubbing device to assist in removing detergent for a container. Ikeda teaches that it is know to use a "rubbing device" (hopper 20) to dispense and meter a detergent (col. 3, lines 31-50). Therefore, the position is taken that a person of ordinary skill in the art at the time the invention was made would have been motivated to modify Hickman or Ferre with the "rubbing device" disclosed by Ikeda in order to provide efficient measuring and dispensing of detergent.

Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: U.S. Patent Publication No. 2002/0179125 to Klos *et al.*, which discloses carwash having a multi-detergent supply system with diluting means; U.S. Patent No. 6,640,820 to Caldwell *et al.*, which discloses a carwash with multi-detergent dispensing system; U.S. Patent No. 6,571,807 to Jones, which discloses a carwash with a multi-detergent dispensing system.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph L. Perrin, Ph.D. whose telephone

number is (571)272-1305. The examiner can normally be reached on M-F 7:00-4:30, except alternate Fridays.

19. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael E. Barr can be reached on (571)272-1414. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

20. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Joseph L. Perrin, Ph.D.
Examiner
Art Unit 1746

jlp